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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. _____

JOHN W. HADZIMA, Petitioner,

vs.

UNITED STATES OF AMERICA,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOHN W. HADZIMA, prays that a Writ of Certiorari issue to review the judgments entered in this case on November 10, 1953, and on January 23, 1956, by the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals (Appendix A, infra, p 13) is reported at _____.

JURISDICTION

The judgment of the Court of Appeals as to appellant

HADZIMA, was entered on January 23, 1956, (Appendix A, infra, p. 23). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

Whether a defendant has had a fair trial where, after two jurors, each on separate occasions had communicated with third persons, one a government witness, the trial judge, in the exercise of his discretion (A) failed to determine whether (1) each of the two jurors had spoken to other members of the jury panel concerning such communications and (2) whether knowledge of the communications came to the attention of the other members of the jury panel; (B) failed to question the other members of the jury (1) whether they were spoken to or discussed with anyone the matter of the two contacts, and (2) if so, what effect it had upon them in their deliberations.

Whether a reasonable doubt exists from such failures that the other jurors did not know of such contacts, and had not thus formulated an adverse opinion against petitioner.

Whether the extraneous communications with the jurors effected petitioners right to a fair trial.

Petitioner JOHN W. HADZIMA joins with Petitioner ROY PURSSELLEY on such other issues presented by him; and points raised, stated and presented in ROY PURSSELLEY'S petition for Writ of Certiorari.

STATUTES INVOLVED

The Constitution of the United States, Amendment V (due process).

STATEMENT

During the course of the trial which began September 29, 1953, and ended October 21, 1953, one of the jurors NANCY JARVIS, while enroute from San Diego to Los Angeles by train, on Saturday, October 10, 1953, was seated next to a woman passenger who upon learning that NANCY JARVIS was a juror in the above entitled matter, told NANCY JARVIS that she was related to STEINER (another defendant) by marriage and briefly discussed STEINER'S illness with her. On Sunday morning, October 11, 1953, the juror, NANCY JARVIS, called the Trial Judge from Los Angeles and informed him of the foregoing. The trial judge told Mrs. Jarvis not to discuss the matter with anyone and requested that she see him on the following morning. (R-51-52)

On Monday morning, October 12, 1953, at 9:15 A.M., in the presence of a court reporter, Mrs. Jarvis testified under oath concerning the incident. Mrs. Jarvis stated that the train was crowded and that this woman took the seat next to her and that they began to converse. That when this woman learned that Mrs. Jarvis was a juror in the case, she told Mrs. Jarvis that she was related to Steiner by marriage; that he was a very sick man, that before the indictment he was belligerent, that he had gotten into bad company, that he had two fine children, that his wife was employed at Sears & Roebuck, and had it not been for such employment the Steiner's would have been unable to own a home. Mrs. Jarvis stated that she

did not believe that this woman intended to influence her, that the conversation had no effect upon her, and that it would not prejudice her either for or against the government or any of the defendants. (R-52)

At approximately 10:00 o'clock A. M., Monday morning, October 12, 1953, in the presence of the trial judge and all of the attorneys, the reporter read such testimony. Immediately thereafter the trial judge informed counsel of his deep concern over this incident.

The trial judge suggested that Mrs. Jarvis be excused from further service on the jury, and that she be replaced by the first of the two alternate jurors.

The trial judge also suggested that he interrogate all the jurors as to whether they had discussed the case with anyone or whether anyone had discussed or attempted to discuss the case with them. (October 12, 1953). Counsel for the defendants strenuously objected to both of the trial judge's suggesstions.

But on October 8, 1953, Rupert L. Hefner, then a government witness, was in Court on that morning when the trial judge admonished the jury not to read the newspaper, or listen to the radio or discuss the case with anyone. (R-57). However, Hefner stated that he did not hear the trial judge tell the jury not to talk with anyone, but interpreted the trial judge's remarks to mean that the jurors should not talk to any of the defendants. (R-57)

Prior to October 8, 1953, he had invited Mrs. Gloria Miller, one of the jurors to ride with him and that at such time he knew that she was a juror. This was corroborated by Mrs. Gloria Miller that Hefner

had stopped several times before October 8, 1953.

On October 8, 1953, Hefner saw juror Miller waiting for a bus and picked her up and took her to her home and was with her until approximately 7:00 o'clock that evening. (R-707)

On October 12, 1953, Hefner was excused as a government witness; that evening he again contacted juror Miller at her home, came over to her home and stayed a short time. (R-729)

Hefner testified that he told juror Miller that he owned a pet shop in Los Angeles; that he knew 2 or 3 of the defendants; that Steiner "was a legitimate business man, the same as I was"; that he did most of his business with "independent growers--backyard people with backyard aviaries"; that he had been subpenaed to testify for the Government--that he was going to testify but "as far as his testimony was concerned, he didn't know whether it will have any bearing on the case or not."

That juror Miller told him "the testimony was confusing--out of 9 people, what is supposed to fit who?" To which he replied, "I don't know, I haven't heard the testimony."

That she heard his name mentioned by the witness Jones who testified that he (Jones) had delivered birds to Hefner, and that he replied, "Yes, Mr. Jones had been in his pet shop 4 or 5 times."

That she mentioned a humorous incident that occurred in court, which he also heard, and that she said such incident "brought out a little laugh, or

something of that kind, to relieve the tension a little bit, as far as sitting and listening." (R-39-40)

The humorous incident to which Mr. Hefner referred, concerned the testimony of a Customs Agent who trailed a truck containing birds. Hadzima was a passenger in this truck, which the records showed he owned. Just as the truck reached a traffic control signal, which required the driver of the truck to stop, Hadzima jumped from the truck, ran around it to the automobile of the Customs Agent and engaged the Customs Agent in conversation. While he was telling the Customs Agent about an "important smuggler," the driver of the truck containing the birds drove away and disappeared. (R-42)

Mrs. Miller did not recall that there was any mention made of the humorous incident to which Mr. Hefner referred, nor did she recall that she had ever told him that she was confused at any time about the testimony, but she said that she may have made such a statement because, at that point, the evidence was quite confusing. (R-41)

Mrs. Gloria Miller testified that Lee Hefner told her that he was in the bird business; that he bought birds from everybody, including Mr. Jones, the defendants, and 200 or 300 backyard breeders; that he had been subpenaed as a witness by the Government but, on the second conversation, he told her that he had signed a statement for Mr. Sankary, the assistant United States Attorney, and that he did not have to testify on the witness stand; that he was to get his witness fees for having come to San Diego, and having spent so much time there.

To these specific questions she replied:

Q. "Where were you, if you recall, when you were waiting for this bus?"

A. "I was on Broadway, I was on this side of the street and I was walking to the corner to get the bus, I think it was this State Street, State on Broadway. It was in front of the hotel, San Diego Hotel. I had just left one of the other jurors." (R-738)

Q. "And on those occasions, you got the Coronado bus?"

A. "Well, once here at the bus stop. The second time I was going to lunch and he pulled up. I was with, I had just left the other jurors then, too." (R-739)

THE COURT: "Now, tell us everything that you think that he said, what you said, that has any relevancy to this case?"

THE WITNESS: "Well, the only thing that had any relevancy whatsoever, was the fact he was in the bird business and sells, raises birds, and he told me that he had two or three hundred backyard bird breeders himself that he bought from. That_____"

THE COURT: "How did you happen to talk to him about birds when you knew that this case was about birds?"

THE WITNESS: "I don't know. It is stupidity,

"is all I can say, my own stupidity."

THE COURT: "Now, didn't you recall that practically at every session of this court I_____"

THE WITNESS: "Yes".

THE COURT: "---_____urged you not to talk to any witnesses, or anybody connected with the case in any respect, or even listen to the radio?"

THE WITNESS: "Well, I complied with everything else. When I met him I didn't know who he was and I don't like to be rude; when he called up that evening, I didn't want to be rude, and I thought this was the last time I will see him and I wouldn't be bothered with him." (R-730)

The court was not informed of either of the conversations Hefner had with Mrs. Miller for almost a week after the jury returned its verdict. (R-60)

REASONS FOR GRANTING THE WRIT

It is important that defendants be afforded a fair trial. In that respect defendants should be tried by impartial jurors who are not disturbed by outside influence or even mere opinion (verbal, newspaper or otherwise); nor by the least amount of guidance respecting any part or portion of the evidence which might or could be substituted by the juror in place of the evidence presented in the trial of the matter. Mattox vs. U. S., 146 U. S. 140, 13 S. Ct. 50 36 L Ed

917 (1892).

The Trial Judge had the foregoing in mind, he said: "It is well settled that communications relative to a case on trial between jurors and third persons or witnesses are not only improper but also presumptively prejudicial to the rights of defendants." (R-38) In the instant case two such known contacts occurred between a juror and a third person during the course of the trial. In relation thereto, the Trial Judge stated: "It likewise cast upon the government the burden to dispel such presumption and to show that no prejudice would or could result to the defendants or any of them. (R-39) The following cases being cited:

Wheaton vs. U. S. (Cir. 1943) 133 F. 2d 522; Chamber vs. U. S., (8 Cir. 1916) 237 Fed 513; Lewis vs. U. S. (1 Cir. 1924) 295 Fed. 441; Klose vs. U. S., (8 Cir. 1931) 49 F. 2d 177; Cavness vs. U. S., (9 Cir. 1951) 187 F. 2d 719; U. S. vs. Rakes, (D. C. E. D. Va) 74 Fed. Supp. 645.

In connection with the motion for a new trial, based primarily upon the ground that a juror, to-wit, GLORIA ANN MILLER, had been in contact with a government witness, to-wit, LEE HEFNER, the Trial Judge also knew that another of the jurors, to-wit, NANCY JARVIS, had talked to a relative of the defendant, FRED W. STEINER, (R-51-52-53).

After the juror NANCY JARVIS, had talked to the relative of the defendant FRED W. STEINER, the matter came to the attention of the Trial Judge when the juror Mrs. Jarvis called the Trial Judge to advise him of her discussion with this person. (R-51-52)

Contrasted with the contact of the juror GLORIA ANN MILLER, by the government witness LEE HEFNER, the juror GLORIA ANN MILLER had not acted in such good faith; did not call the Trial Judge, but clandestinely or otherwise withheld this information from the Court in spite of the Court's admonitions. Such action on her part gives way to suspicion and conjecture regarding her good faith in disclosing her entire conversation with the government witness, LEE HEFNER. It would seem that her statements regarding her conversation with this government witness should have been viewed with distrust; and should have placed the Court on further inquiry regarding the knowledge, of these contacts, of the entire jury panel.

Following the Jarvis incident, the Court stated in its opinion: "I also suggested that I interrogate all the jurors as to whether they had discussed the case with anyone or whether anyone had discussed or attempted to discuss the case with them". (R-53)

In view of the foregoing, since the Trial Judge already had in mind interrogating the rest of the jurors following the Jarvis incident, this should have been done when the Hefner-Miller matter came to his attention.

It is petitioner Hadzima's contention that the Trial Judge did not go far enough in dispelling the presumption of prejudice; that there is left to conjecture whether the jury panel was tainted.

The burden rested on the government in the exercise of the trial judge's discretion to fully dispel any possibility that the jury had by now become prejudiced toward the defendant. This burden it would seem

could not be waived by a defendant or defendants since the matter would tend to go to the essence or substance of the trial.

It is petitioner Hadzima's further contention that a reasonable doubt now exists that other jurors did not know of the Jarvis and Miller contacts.

The trial judge or the government, while having the burden of proof to dispel the presumption of prejudice neither questioned juror Jarvis nor juror Miller regarding whether either or both spoke to any of the jurors respecting their contacts with third persons.

It is petitioner's contention that the government or the trial judge should have asked jurors Jarvis and particularly Miller the specific questions whether they mentioned or spoke concerning their contacts, with the other jurors.

The other jurors were not questioned whether they were spoken to or spoke to anyone or discussed with anyone the matter of the Jarvis and Miller contacts; or whether they had knowledge of these contacts, and if so, what effect it had and the substance of such conversation.

It is petitioner's contention that the government or the trial judge should have asked the other jurors the specific questions whether they knew; had been spoken to or discussed with anyone concerning the JARVIS and MILLER contacts.

Particular prejudice was created against the defendant JOHN W. HADZIMA regarding the mention

by Miller of the humorous incident where HADZIMA, a passenger in a truck which had to stop for a traffic control signal jumped out and engaged the Customs in a conversation permitting the driver of the truck containing the birds to drive on. Hefner said juror Miller did mention this incident; Mrs. Miller stated she did not recall mentioning it.

In the ELMER F. REMMER v. U. S. A., No. 156, October Term, 1955, in the Supreme Court of the United States, decided March 5, 1956, the Court stated "For it is the law's objective to guard jealously the sanctity of the jury's right to operate as freely as possible from outside unauthorized intrusions purposefully made" (P. 5 of the opinion). Also, as stated in the REMMER case, there should be a full hearing by the District Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

HAROLD P. LASHER,
Attorney for Petitioner,
JOHN W. HADZIMA

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 14,152

Jan. 23, 1956

FRED W. STEINER, JOHN W. HADZIMA, OLIVE SPICUZZA, CHARLES WALKER and ROY PURSSELLEY,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court For the Southern District of California, Southern Division.

Before MATHEWS and CHAMBERS, Circuit Judges, and FOLEY, District Judge.

MATHEWS, Circuit Judge.

Appellants (Fred W. Steiner, John W. Hadzima, Olive Spicuzza, Charles Walker and Roy Pursselley) and others were indicted in the District Court for the Southern District of California. The indictment was in 11 counts. Appellants pleaded not guilty and had a

jury trial, in the course of which counts 2, 3, 4, 5, 6 and 7 were dismissed. The jury returned verdicts finding Steiner and Hadzima guilty on counts 1, 8, 9, 10 and 11, Spicuzza guilty on counts 1, 8 and 9, Walker guilty on counts 1, 10 and 11 and Purselley guilty on count 1 only. From judgments entered on these verdicts appellants appeal.

Appellants contend that the indictment failed to charge an offense against the United States, thus, in effect, contending that each of counts 1, 8, 9, 10 and 11 failed to charge such an offense.

Count 1 alleged, in substance, that on December 10, 1949, and continuously thereafter until August 5, 1953,[1] in the Southern Division of the Southern District of California, appellants, their codefendants and others conspired to commit offenses against the United States, namely, violations of 18 U.S.C.A.

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[1]The date on which the indictment was returned.

§ 545,[2] by knowingly and willfully, with intent to defraud the United States, smuggling and clandestinely introducing into the United States merchandise, namely, psittacine birds, which should have been invoiced; by fraudulently and knowingly importing merchandise, namely, psittacine birds, into the United States contrary to law; and by knowingly receiving, concealing and facilitating the transportation and concealment of such merchandise after importation, knowing the same to have been imported into the United States contrary to law. Count 1 further alleged, in substance, that on specified dates between December 10, 1949, and May 10, 1953, in the Southern Division of the Southern District of California, appellants and their coconspirators did

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[2]At all pertinent times, § 545 provided:

"Whoever knowingly and willfully, with intent to defraud the United States, smuggles, or clandestinely introduces into the United States any merchandise which should have been invoiced ***; or

"Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law --

"Shall be fined not more than $5,000 or imprisoned not more than two years, or both. ***"

35 overt acts[3] to effect the object of the conspiracy. Thus count 1 charged an offense against the United States, namely, a violation of 18 U.S.C.A. § 371.[4]

Appellants contend that the birds mentioned in count 1 were not merchandise, within the meaning of 18 U.S.C.A. z 545. There is no merit in this contention.[5]

Count 1 failed to state what law (other than 18 U.S.C.A. § 545) the importations mentioned therein

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[3]The overt acts were described in count 1.

[4]At all pertinent times, § 371 provided:

"If two or more persons conspire *** to commit any offense against the United States, *** and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the punishment provided for such misdemeanor."

[5]See definition of "merchandise" in 19 U.S.C.A. § 1401(c). It should be noted that 19 U.S.C.A. § 1401(c) was derived from § 401(c) of the Tariff Act of June 17, 1930, 46 Stat. 708, and that 18 U.S.C.A. § 545 was derived from § 593 of the same Act, 46 Stat. 751.

were contrary to, or in what respect such importations were contrary to such law. Appellants contend that the failure so to state rendered count 1 fatally defective. There is no merit in this contention.[6]

Count 8 alleged, in substance, that on or about April 3, 1952, in the Southern Division of the Southern District of California, appellants and their codefendants fraudulently and knowingly imported into the United States certain merchandise, namely, a number of psittacine birds, contrary to law. Count 9 alleged, in substance, that on or about April 3, 1952, in the Southern Division of the Southern District of California, appellants and their codefendants knowingly received, concealed and facilitated the transportation and concealment of certain merchandise, namely, a number of psittacine birds, after importation, knowing the same to have been imported into the United States contrary to law. Count 10 was similar to count 8, and count 11 was similar to count 9, except that the date mentioned in counts 10 and 11 was September 22, 1952, instead of April 3, 1952. Thus each of counts 8, 9, 10 and 11 attempted to charge a violation of 18 U.S.C.A. § 545 and did not charge or attempt to charge any other offense. However, each of counts 8, 9, 10

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[6]Wong Tai v. United States, 273 U. S. 77. Like the indictment in the Wong Tai case, count 1 of the indictment in this case charged a conspiracy and did not charge or attempt to charge any substantive offense. Hence appellants' contention as to count 1 finds no support in Keck v. United States, 172 U. S. 434, or in Babb v. United States, 5 Cir., 218 F. 2d 538.

and 11 failed to charge a violation of 18 U.S.C.A. §545 and failed to charge an offense against the United States.[7] Hence the convictions on counts 8, 9, 10 and 11 were improper.

The defect in counts 8, 9, 10 and 11 could not have been cured by a bill of particulars.[8] It is therefore immaterial that appellants did not move for such a bill.

At the trial, after the close of the Government's evidence, Hadzima, Spicuzza, Walker and Pursselley, by their counsel, Clifford L. Duke, Jr., moved the District Court[9] "to compel the Government to elect, if any, offenses they choose to rely as far as the substantive counts are concerned." The motion was not granted, but was--impliedly, if not expressly--

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[7]Keck v. United States, supra; Babb v. United States, supra. Counts 8, 9, 10 and 11, like the counts involved in the Keck and Babb cases, attempted to charge substantive offenses, not conspiracies. Hence the holding in Wong Tai v. United States, supra, is inapplicable to counts 8, 9, 10 and 11. There was not at any pertinent time any law absolutely prohibiting the importation of psittacine birds into the United States. Hence such cases as Wong Lung Sing v. United States, 9 Cir., 3 F. 2d 780, are not in point here.

[8]Babb v. United States, supra.

[9]Steiner does not appear to have joined in the motion.

denied. Appellants,[10] contend that it should have been granted. However, it did not relate to count 1, but related only to the substantive counts of the indictment. The only substantive counts here involved are counts 8, 9, 10 and 11. In view of our above stated conclusions as to these counts, we need not and do not consider the contention that the motion should have been granted.

The trial began on September 29, 1953, and ended on October 21, 1953. Between those dates, many recesses were taken. During such recesses, the jurors were permitted to separate, after being properly admonished. On Onctober 8 and October 12, 1953, during such recesses, a juror, Gloria Ann Miller, also known as Gloria Miller, had conversations with Rupert L. Hefner, also known as Lee Hefner. On October 29, 1953--after the verdicts were returned and before appellants were sentenced--appellants filed a motion for a new trial. A stated ground of the motion was "The jury committed misconduct during the trial in that certain jurors conversed with witnesses subpoenaed to testify on behalf of

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[10]Including Steiner.

the Government[11] outside the courtoom." There was attached to the motion a supporting affidavit of Hefner, from which it appeared that he had conversed with Miller on October 8 and October 12, 1953. The District Court conducted a hearing on the motion--a hearing at which Hefner and Miller testified as witnesses.[12] Finding that appellants were not prejudiced by the conversations between Hefner and Miller, the District Court denied the motion. Appellants contend that they we were prejudiced by the conversations and that therefore the motion should have been granted. However, the District Court's finding that appellants were not so prejudiced was supported by the evidence and is accepted by us as correct. Furthermore, the motion was

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[11] Hefner was subpoenaed to appear at the trial as a witness for the Government. He did appear, but did not testify at the trial. It is not here contended, nor does the record show, that any juror other than Miller conversed with any witness, or that Miller conversed with any witness other than Hefner.

[12] These witnesses were examined by counsel for the Government, by counsel for appellants and by the District Court. No other testimony was adduced or offered at the hearing.

addressed to the District Court's discretion.[13] The denial of such a motion is reviewable, if at all, only for an abuse of discretion.[14] Here no abuse of discretion is shown.

Appellants were sentenced on count 1 under and in conformity with the first paragraph of 18 U. C. S. C. §371.[15] Steiner, Spicuzza, Walker and Pursselley contend that the offenses the commission of which was the object of the conspiracy charged in count 1 were misdemeanors only,[16] namely, violations of a regulation, 42 C. F. R. § 71.152(b), prescribed by the Surgeon General of the United States under 42 U. S. C. A. § 264 and punishable under 42 U. S. C. A. § 271(a), and that therefore, if sentenced at all on count 1, appellants should have been sentenced under and in conformity with

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[13]Allred v. United States, 9 Cir., 146 F. 2d 193; Banks v. United States, 9 Cir., 147 F. 2d 628; Gage v. United States, 9 Cir., 167 F. 2d 122; Cagleston v. United States, 9 Cir., 172 F. 2d 194; Grover v. United States, 9 Cir., 183 F. 2d 650; Adams v. United States, 9 Cir., 191 F. 2d 206.

[14]Grover v. United States, supra.

[15]See footnote 4.

[16]See 18 U. S. C. A. § 1.

second paragraph of 18 U.S.C.A. § 371.[17] There is no merit in these contentions.[18] Nor is there any merit in Hadzima's contention that the offenses the commission of which was the object of the conspiracy charged in count 1 were punishable under 18 U.S.C.A. §§ 42 and 43 and under 42 U.S.C.A. § 271(a). Obviously, they were punishable under 18 U.S.C.A. § 545[19] and hence were felonies.[20] Accordingly, and properly, appellants were sentenced on count 1 under and in conformity with the first paragraph of 18 U.S.C.A. §371.

The judgments against Steiner and Hadzima are affirmed as to count 1 and reversed as to counts 8, 9, 10 and 11. The judgment against Spicuzza is affirmed as to count 1 and reversed as to counts 8 and 9. The judgment against Walker is affirmed as to count 1 and reversed as to counts 10 and 11. The judgment against Pursselley is affirmed in toto.

(Endorsed:) Opinion. Filed Jan. 23, 1956. Paul P. O'Brien, Clerk.

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[17] See footnote 4.

[18] Murray v. United States, 9 Cir., 217 F. 2d 583.

[19] See footnote 2.

[20] See 18 U.S.C.A. § 1.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 14,512

FRED W. STEINER, JOHN W. HADZIMA, OLIVE SPICUZZA, CHARLES WALKER and ROY PURSSELLEY,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

JUDGMENT

Appeal from the United States District Court for the Southern District of California, Southern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgments of the said District Court in this cause against Steiner and Hadzima be, and hereby are affirmed as to count 1 and reversed as to counts 8, 9, 10 and 11, and that the judgment against Spicuzza be, and hereby is affirmed as to count 1 and reversed as to counts 8 and 9. The judgment against Walker is affirmed as to count 1 and reversed as to counts 10 and 11. The judgment against

Pursselley is affirmed in toto.

(ENDORSED) Judgment
Filed and Entered: January 23, 1956
PAUL P. O'BRIEN, Clerk.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Thursday, March 15, 1956

Before: MATHEWS and CHAMBERS, Circuit Judges, and FOLEY, District Judge.

ORDER DENYING PETITION FOR REHEARING

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of Appellant HADZIMA, filed February 20, 1956, and within time allowed by the rule of Court for a rehearing of the above cause be, and hereby is denied.